IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

FAO.No. 144 of 2007()

AGAINST THE ORDER DATED 24/06/2006 IN IA.2258 & 2259/2005 IN OS.473/2000 of PRINCIPAL SUB COURT, PALAKKAD
.....

APPELLANT/PETITIONER/DEFENDANT:

V.K.CHAMI, S/O KARUPPAN,
AGED 55 YEARS, VALIYAKULANGARA VEEDU,
KODUNTHIRAPULLY, PIRAYIRI AMSOM,
PALAKKAD TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENTS: APPELLANT/PLAINTIFF:

M.K.SUKUMARAN, S/O M.R.KUTTAN,
MATTUMMEL VEEDU, MANIKKASSERY,
KONGAD AMSOM, PALAKKAD TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.D.KRISHNAPRASAD
SMT.O.K.SANTHA

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 21/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.KOSHY & V.GIRI, JJ.

F.A.O.NO.144 OF 2007 ()

Dated this the 21st day of August, 2007

J U D G M E N T

KOSHY,J.

Appellant is the defendant in O.S.No.473/2000 on the file of the Sub Court, Palakkad. On 16.10.2004, when the case was included in the special list, appellant was absent. The trial court proceeded to set him ex parte and passed an ex parte decree on 25.10.2004. He filed I.A.No.2258/2005 praying to set aside the ex parte decree against him contending that he was laid down for treatment. The above petition to set aside ex parte order is filed with a delay condonation petition to condone the delay of 227 days. The trial court dismissed the applications. It is contended by the counsel for the respondents that the appellant was deliberately protracting the case. The case was posted in the special list in 2004 and it was contended that appellant was advised to bed rest but the medical certificate was produced from a Gynaecologist and there is no reason why delay is occurred in filing the appeal as appeal was also delayed. It has come out during the course of

argument that the appellant and respondents are brother - in - laws. It is also contended that there was a criminal case wherein appellant was acquitted. But it is a settled law that the findings in the criminal court judgment is not binding on the civil court proceedings. However we are of the opinion that a decision on merit is required. Therefore, appeal is allowed and delay shall stand condoned. Suit shall bet taken into refile, provided, appellant pays Rs.25,000/- as costs to the plaintiff and memo regarding payment is filed before the court below within one month from today or deposited in the trial court. After deposit of the same, plaintiff is entitled to withdraw the same. We also make it clear that the appellant shall not ask for any further adjournment. If the amount of Rs.25,000/- is not paid as directed, the impugned order shall stand confirmed. We also direct the court below that after the suit is restored on complying with the conditions, it shall be disposed of as expeditiously as possible. Parties may appear before the trial court on 27.9.2007. With the above directions this appeal is allowed.

J.B.KOSHY, JUDGE

V.GIRI, JUDGE

prp

J.B.KOSHY & V.GIRI, JJ.

M.F.A.NO. OF 2006 ()

J U D G M E N T

21st August, 2007